

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0477 CG

Charity Gaming

For the Period: January 22, 1997 through January 25, 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Charity Gaming – Contents of License Applications

Authority: IC 4-32-9-4(b)(7); IC 6-8.1-5-1; Portland Summer Festival v. Department of Revenue, 634 N.E. 2d 45 (Ind.App. 5 Dist. 1993).

The Petitioner protests the assessment made by the Department.

II. Charity Gaming – Grounds for Penalties

Authority: IC 4-32-12-1(4); IC 4-32-9-29; Portland Summer Festival v. Department of Revenue, 634 N.E. 2d 45 (Ind.App. 5 Dist. 1993).

The Petitioner protests the assessment made by the Department.

III. Charity Gaming – Grounds for Penalties

Authority: IC 4-32-12-1(5); IC 4-32-9-4; IC 4-32-9-15; Portland Summer Festival v. Department of Revenue, 634 N.E. 2d 45 (Ind.App. 5 Dist. 1993).

The Petitioner protests the assessment made by the Department.

STATEMENT OF FACTS

The Indiana Department of Revenue conducted an investigation into the Petitioner's festival charity gaming operations. The investigation consisted of interviews with a number of individuals who had been hired to work multiple festivals. A number of these

individuals admitted that they had been contacted approximately two months in advance of the event and were asked to sign up as a member of the Petitioner's organization.

IC 4-32-7-3 states, "The department may adopt rules under IC 4-22-2 for the establishment, implementation, and operation of allowable events or to ensure that the allowable events are consistently operated in a fair and honest manner."

I. Charity Gaming – Contents of License Applications

DISCUSSION

The Department's investigation found that a single individual acted as an operator during the Petitioner's festival; however, he was not properly listed as an operator on Petitioner's license application.

Pursuant to IC 4-32-9-4, Each organization applying for a bingo license, special bingo license, charity game night license, raffle license, door prize drawing license, or festival license must submit to the department a written application on a form prescribed by the department. IC 4-32-9-4(b)(7) states in pertinent part, "The application must include the information that the department requires, including the following: ... The name of each proposed operator and sufficient facts relating to the proposed operator to enable the department to determine whether the proposed operator is qualified to serve as an operator."

Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

The Department's investigation revealed that an individual (Mr. K) was acting as an operator for the taxpayer. (R. at 11.). However, under oath Mr. K (who was the Department's witness) was asked by Petitioner's counsel, "Were you the operator the events held by the (Petitioner's name omitted) on January 22 through January 25 of 1997?". Mr. K answered, "No, I wasn't". (R. at 41-42.). In this instance, the taxpayer met its burden of proof. The taxpayer's protest is respectfully sustained.

FINDING

The Petitioner's protest is sustained

II. Charity Gaming – Grounds for Penalties

DISCUSSION

IC 4-32-12-1 states, "The department may suspend or revoke the license of or levy a civil penalty against a licensee under this article for any of the following: ...(4) Commission of a fraud, deceit, or misrepresentation."

According to the Department's letter to Petitioner dated July 2, 1998, the Department's investigation revealed that several of the Petitioner's workers were approached by a single individual and asked to join the organization two (2) months and six (6) days prior to the planned event. The workers also admitted to Department's investigators that they had been contacted and hired in the same manner for another of the Petitioner's festivals held in January of 1997. The Department had determined that the workers were recruited to become members of the Petitioner's organization specifically to perform work at the festival. According to the Department, these actions were undertaken by the Petitioner in order to circumvent IC 4-32-9-29.

IC 4-32-9-29 states, "A worker must be a member in good standing of a qualified organization that is conducting an allowable event for at least thirty (30) days at the time of the allowable event."

Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

Under oath, Mr. K was asked by Petitioner's counsel:

Q. Okay. Did you recruit workers to work at the (Petitioner's name omitted)?

A. Did I, no.

Q. But you did at the (name of another organization omitted)?

A. Yes.

(R. at 44.).

Additionally, the Petitioner asked Mr. K:

Q. Okay. And if you saw somebody that did particularly well that event, was that a reason for you to later approach them and say, would you help me with this other situation.

A. Yes.

(R, at 45.).

It is apparent from the testimony provided by the Department's witness that he in fact did recruit individuals to work several charity gaming events. It is also clear from the testimony of the witness that he did not recruit workers for the event in question.

In this instance, the taxpayer met its burden of proof. The taxpayer's protest is respectfully sustained.

FINDING

The Petitioner's protest is sustained.

III. Charity Gaming – Grounds for Penalties

DISCUSSION

IC 4-32-12-1 states, "The department may suspend or revoke the license of or levy a civil penalty against a licensee under this article for any of the following: ... (5) Conduct prejudicial to public confidence in the department." The Department's investigation identified numerous misrepresentations on the Petitioner's festival license application.

Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

Petitioner filed its Indiana Department of Revenue Festival License Application (CG-7) on December 10, 1996. The Department received the application on December 13, 1996. (Petitioner's exhibit #4). The Department's exhibit B purporting to be a self-authenticated document containing the Department's copy of the Petitioner's CG-7 is missing pages three (3) and four (4). Therefore, the Department must look to the Petitioner's complete copy (Exhibit # 4) in making its final determination on this issue. The Petitioner also stated in the hearing that its Exhibit #2 is a copy of the membership list that accompanied its application.

According to IC 4-32-9-4, "Each organization applying for a ... license... must submit to the department a written application on a form prescribed by the department... (b) The application must include the information that the department requires, including the following: (9) Any other information considered necessary by the department." The Indiana Department of Revenue's Form CG-7 line 12 states, "List all individuals (excluding operator information on Line 9) who will assist and work in the operation of the licensed event. Attach additional sheets if necessary. Please type or print." The information required to be provided on the form is the worker's name, home address, social security number, date of birth, daytime telephone number, and whether the worker is a member of the organization (member in good standing of the qualified organization that is conducting an allowable event for at least thirty (30) days at the time of the allowable event).

A review of the Petitioner's application, reveals several omissions none of which can be considered material. This is evidenced by the fact that the Department approved the

license and allowed the Petitioner to conduct its charity event. These omissions do not rise to the level of conduct that is prejudicial to public confidence in the Department.

FINDING

The Petitioner's protest is sustained.

BK/MR--991008